

AUG 12 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

BRIGIDO OLGUIN-HERNANDEZ,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 01-71206

Agency No. A92-002-812

MEMORANDUM*

BRIGIDO OLGUIN-HERNANDEZ,

Petitioner,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 02-72341

Agency No. A92-002-812

On Petition for Review of an Order of the
Board of Immigration Appeals

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Submitted August 8, 2003**
Pasadena, California

Before: NOONAN, TALLMAN, and RAWLINSON, Circuit Judges.

The Board of Immigration Appeals may summarily dismiss an appeal if "[t]he party . . . indicates on Form EOIR-26 . . . that he or she will file a brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his or her failure to do so" 8 C.F.R. § 1003.1(d)(2)(i)(E).

Olguin-Hernandez promised, yet failed, to file a timely written brief. The BIA nevertheless examined Hernandez' notice of appeal to ascertain whether the form adequately specified the factual and legal basis for the appeal. It did not. Thus, "the Board was left guessing at how and why petitioner thought the court had erred," *Toquero v. INS*, 956 F.2d 193, 195 (9th Cir. 1992) (citation omitted), and summary dismissal of Hernandez' appeal was appropriate. *See Rojas-Garcia v. Ashcroft*, No. 02-35788, 2003 WL 21739501, * 4 (9th Cir. July 29, 2003).

Hernandez also filed a motion to reopen his removal proceedings, arguing that the subsequent birth of his two United States citizen children made him newly

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

eligible for cancellation of removal. Relying upon *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002) and *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), the BIA denied Hernandez' motion to reopen.

We review the BIA's denial of Hernandez' motion to reopen for an abuse of discretion. *Guzman v. INS*, 318 F.3d 911, 912 n.1 (9th Cir. 2003). Given that both *Andazola* and *Monreal* are factually indistinguishable from this case, the BIA's reliance on the two cases was not an abuse of discretion.

PETITION DENIED.